REMARKS

In items 3-5 spanning pages 2-3 in the August 16, 2005 Office Action, claims 1-12 were rejected under 35 U.S.C. § 112, second paragraph as indefinite because of the use of relative terminology in the claims. In item 6 of the Office Action, claims 10-12 were rejected under 35 U.S.C. § 112, sixth paragraph "as impossible to determine the equivalents" (Office Action, page 3, lines 5-8). In item 8 of the Office Action, claims 1-12 were rejected under 35 USC § 103(a) as being unpatentable over Lumelsky (US Patent 6,516,350) in view of Choquier (US Patent 5,951,694).

Claims 1-12 are pending and reconsideration is requested.

REJECTIONS UNDER 35 USC § 112

In items 3-5 spanning pages 2-3 in the August 16, 2005 Office Action, claims 1-12 were rejected under 35 U.S.C. § 112, second paragraph as indefinite because "the term 'low level service' in claims 1, 6-10 is a relative term" (Office Action, page 2, lines 18-20). Contrary to this assertion, claims 1-12 are not indefinite because the limitation "low level" is defined in the specification at least on pages 11-14.

> The fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. 112, second paragraph, *Seattle Box Co., v. Industrial Crating & Packing, Inc.,* F.2d 818, 221 USPQ 568 (Fed. Cir. 1984). Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification ... **OR WHETHER A STANDARD IS DISCLOSED**

MPEP 2173.05(b) **Relative Terminology** (Rev. 2, May 2004) p. 2100-208. For example, claim 1 first defines "a plurality of groups of service servers depending on quality levels of rendered services" (claim 1, lines 6-7). Specifically, claim 1 establishes a relationship between "an intermediate server group of service servers" and "low level service" offerings (see claim 1, lines 7-8) which is supported in the specification by, e.g., "a low-level request is passed to a service server of the intermediate group or the low-level group" (specification, page 10, lines 24-25 and page 12, line 1).

Second, the specification on pages 10-14 establishes a standard relationship between levels of service with high, low and intermediate groups of service servers and discloses standards for "threshold values ... for maintaining the quality of each service level" (page 11, lines 16-22). Thus, the specification discloses a standard enabling a person of ordinary skill in

the art to ascertain the degree of "low level service offerings" claimed. Therefore, the term "low level service" is defined and claims 1-12 are definite.

In item 6 on page 3 of the Office Action, claims 10-12 were rejected under 35 U.S.C. § 112, sixth paragraph as "unclear how the operations/functions are performed ... [and] as impossible to determine the equivalents of the element" (Office Action, page 3, lines 5-8). First, claims 10-12 recite system elements which recite the invention and do not use means-plus-function language or inferentially claim any equivalent system elements and therefore, the sixth paragraph of 35 USC 112 does not apply. Second, the claims are clear for at least the same reasons discussed above in regard to the traversal of the 35 U.S.C. § 112, second paragraph rejections of claims 1-12. Withdrawal of the rejections under 35 U.S.C. § 112 is respectfully requested.

REJECTIONS UNDER 35 USC § 103

In item 8 spanning pages 3-8 of the Office Action, claims 1-12 were rejected under 35 USC § 103(a) as being unpatentable over Lumelsky in view of Choquier.

Claim 1 recites "dividing the service servers to define a plurality of groups of service servers depending on quality levels of rendered services" (claim 1, lines 5-6) as described in the specification at page 6, lines 16-25 and page 11, lines 7-25. What was cited in Lumelsky describes providing "available distributed decision capability ... to achieve and enforce properties over the usage, as well as patterns of usage, of end-resources" (column 7, lines 1-4); creating "a resource monitoring point with respect to the performance of multiple end resources and clients and their usage patterns so as to provide parameters on where, when, and how to satisfy a request" (column 7, lines 4-8); and allocating "global server-side resources ... A plurality of intermediary system resources (such as directories and resource monitors) enable the management of such requests for target content" (column 6, lines 1-4). Thus, the difference between the claimed invention and what was cited in Lumelsky is that the independent claims recite defining groups of service servers by dividing the servers depending on quality levels, while the cited portions of Lumelsky merely describe monitoring usage patterns and resources to manage targeted content service requests.

Further, claim 1 recites: "an intermediate server group of service servers which offer low level service among the service servers at a normal time and dynamically shift service servers among the plurality of groups and render a service as a service quality of a group to which the shift is made" (claim 1, lines 5-9). The same portion of Lumelsky was cited as disclosing this limitation. As discussed above, all that is described in this portion of Lumelsky is monitoring

usage patterns and resources so as to manage targeted content service requests. Nothing was cited or found in Lumelsky that shows a hierarchy of server groups which offer appropriate levels or service dynamically shifting servers between server groups based on levels of service quality required, as discussed in the specification on page 6, lines 16-25.

After it was asserted that Lumelsky discloses "an intermediate server group of service servers which offer low level service among the service servers at a normal time and dynamically shift service servers among the plurality of groups and render a service as a service quality of a group to which the shift is made", it was admitted that Lumelsky "fails to explicitly teach a group of servers which offer low level service among the service servers at a normal time" (Office Action, page 4, lines 17-21). Then, the Office Action asserted that Choquier teaches the elements not shown in Lumelsky. It is submitted that Choquier does not teach or suggest modification of Lumelsky to meet the limitations quoted at the beginning of this paragraph.

What was cited in Choquier describes "using server load data contained within the service map ... to select an application server that has a relatively low processing load" (Abstract) and "multiple application servers independently run the same service application to provide like services to end users, a method of redirecting a client service session from a first application server to a second application server without terminating the client service session" (column 25, lines 50-54) which is in the preamble of claim 1 of Choquier. What was cited in the Abstract of Choquier describes monitoring load data and selecting a server with a low processing load. What was cited in the preamble of claim 1 of Choquier is a broad description of providing back-up server groups operating redundantly, i.e., "corresponding to a particular service " (column 2, lines 1-18), and redirecting a client service session seamlessly from a first server to a second server among those servers operating redundantly. This has nothing to do with providing low level service at a normal time and dynamically shifting service servers among the plurality of groups. Thus, nothing was cited or found in Lumelsky and Choquier either combined together or taken individually that teaches or suggest all of the limitations recited in claim 1.

Independent claims 6-9, all recite "dividing the service servers to define a plurality of groups of service servers depending on quality levels of rendered services ... low level service among the service servers at a normal time and dynamically shift[ing] service servers among the plurality of groups" (e.g., claim 6, lines 4-8). Therefore, it is submitted that claims 6-9 and dependent claims 2-5 and 10-12 are allowable for at least the reasons discussed above in regard to claim 1.

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CONCLUSION

For the reasons set forth above, it is submitted that claims 1-12 are in a condition suitable for allowance. Reconsideration of the claims and an early Notice of Allowance are courteously solicited.

If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

Finally, if there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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